

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0575P

Adjusted Gross Income Tax
Calendar Years 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. **Tax Administration** – Interest

Authority: IC 6-8.1-10-1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer, incorporated under the laws of New Jersey kept a supply of inventory at a public warehouse in Indiana. Taxpayer first qualified to do business in Indiana in June 1988. Sales to Indiana customers from the Indiana warehouse began in January 1990. Taxpayer's sales office is located in Illinois and its salesmen cover the state of Indiana. Taxpayer did not file income tax returns with Indiana but filed sales tax returns.

The taxpayer is liable for gross income tax on the receipts derived from business transactions consummated in Indiana. The sales of its products from the Indiana warehouse to Indiana customers are taxable at the lower rate. The income from its rentals is taxable at the higher rate. The auditor did not tax the sale of products that were shipped from the taxpayer's out of state warehouses to Indiana customers. The taxpayer acquired nexus in Indiana for adjusted gross income tax and should have apportioned income to Indiana using the three-factor formula based upon property, sales and payroll.

The auditor calculated the AGIT for 1994-1997 based upon information supplied by the taxpayer. Because information for the period before 1994 was not available, the taxpayer and the auditor agreed to use the 1994 results as an estimate of the activity during that period. Taxpayer intends to file income tax returns for 1998 and has a federal extension in effect to October 15, 1999.

I. **Tax Administration** –Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to file returns in Indiana for 1990 through 1997.

Taxpayer, in a letter dated October 25, 1999 protested penalties and interest assessed as the nonfiling of the IT-20 was not intentional.

Taxpayer failed to file Indiana returns as required. 45 IAC 15-11-2 assesses a negligence penalty that would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Taxpayer was negligent when it did not make itself aware of its tax obligations in Indiana upon conducting business in Indiana.

FINDING

Taxpayer's protest is denied.

II. **Tax Administration** - Interest

DISCUSSION

Taxpayer protests the interest assessed and states that it needs to be recalculated.

The departmental billings extend the interest sixty days from the date of notice. When the taxpayer remits the amount in full before the end of the sixty-day period, he must recalculate the interest. In this case the taxpayer has only remitted the tax due which has been applied at date of payment. The balance continues to accrue interest.

FINDING

The issue is moot, as the taxpayer has not paid the liability in full and interest continues to accrue.

CONCLUSION

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Taxpayer's protest is denied in Issues I and II.

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